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Joan Marsh  
Director  
AT&T Federal Government Affairs

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY February 16, 2000

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW, Room TWB-204  
Washington, D.C. 20554

EX PARTE OR LATE FILED

RE: Notice of Oral Ex Parte  
In the Matter of Applications for Transfer of Control to AT&T Corp. ("AT&T") of  
Licenses and Authorizations Held by MediaOne Group, Inc. ("MediaOne")  
CS Docket No. 99-251

Dear Ms. Salas:

Yesterday, Professor Janusz Ordover, Stephen Garavito and I, of AT&T, Susan Eid, of MediaOne, David Lawson of Sidley & Austin, and Howard Symons, of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, met with Howard Shelanski, Chief Economist, Sunil Daluvoy, Karl Kandutsch, Anne Levine, and To-Quyen Truong, of the Commission's Cable Services Bureau, and Quindi Franco of the Office of Plans and Policy. The purpose of the meeting was to discuss the applicants' prior submissions in this proceeding demonstrating AT&T's lack of ability or incentive to "dominate" the Internet, as alleged by commentators in this proceeding, and to update the record with information on recent public news releases regarding DSL deployment and subscribership (see list of releases attached). The discussion was consistent with the applicants' prior submissions in this proceeding, as outlined in detail in the attachment to this letter.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Joan Marsh

cc: H. Shelanski A. Levine  
S. Daluvoy T. Truong  
K. Kandutsch Q. Franco

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**RECORD EVIDENCE OF AT&T'S LACK OF ABILITY OR INCENTIVE  
TO "DOMINATE" THE INTERNET**

- **New Entrant.** AT&T is a new entrant in the highly competitive Internet services market, where the dominant players are AOL and the incumbent LECs. The broadband Internet access market, if there is such a market, is still developing. The government should give market forces a chance to work before imposing onerous regulations on a new industry.
  - July 7, 1999 Transfer of Control Application 71-82
  - September 17, 1999 Reply Comments 79-88
  - December 14, 1999 Ex Parte Reply Comments 2-13
  - Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 23-35
  
- **No Ability or Incentive to Dominate.** Post-merger, AT&T will not have the ability or the incentive to "dominate" the Internet.
  - AT&T faces vigorous broadband competition from DSL and satellites, and could soon face competition from terrestrial wireless providers using reallocated UHF spectrum that will be auctioned in May.
    - ❖ July 7, 1999 Transfer of Control Application 71-82
    - ❖ September 17, 1999 Reply Comments 79-84
    - ❖ December 14, 1999 Ex Parte Reply Comments 7-13
    - ❖ Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 23-35
  
  - The Commission staff itself has concluded that "cable companies' service offerings have spurred telephone companies (both incumbents and their competitors), to deploy Digital Subscriber Line (DSL) technologies to deliver broadband access over telephone lines. This burgeoning competition is fueling deployment of broadband access and helping to keep prices low while improving service."
    - ❖ "Telecommunications @ the Millennium, The Telecom Act Turns Four," (Office of Plans and Policy, February 8, 2000) at 5 and Figure 9.
    - ❖ Chairman Kennard anticipates the development of a "network of networks, with multiple broadband platforms, giving American homes the option of many digital services, including cable, DSL, wireless, satellite, and broadcast." "Hot Links to an Open Society," An Address by Chairman William E. Kennard, Federal Communications Commission, to the National Press Club (Washington, D.C. Feb. 8, 2000).
    - ❖ The Cable Services Bureau has found that in the first two quarters of 1999, DSL lines in service increased 300% since the last quarter of 1998, and that "[t]he ILECs' aggressive deployment of DSL can be attributed in large part to the deployment of cable modem service." "Broadband Today, A Staff Report to William E. Kennard, Chairman, Federal Communications Commission on Industry Monitoring Sessions Convened by Cable Services Bureau" (Cable Services Bureau, October 1999) at 27-29 & Appendix B.
  
  - AT&T has no ability to "lock in" their customers, or any other "first mover" advantage. Subscribers dissatisfied with AT&T's broadband Internet services can freely and easily change providers.
    - ❖ September 17, 1999 Reply Comments 85-88
    - ❖ Ordoover/Willig Declaration (submitted with Reply Comments) ¶¶ 109, 127-35
    - ❖ December 14, 1999 Ex Parte Reply Comments 20-22
    - ❖ Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 39-41

- AT&T has committed to the FCC and its customers that it will not restrict subscriber access to unaffiliated Internet content. In any event, has no incentive or ability to do so. AT&T has every incentive to respond to customers' demands for unimpeded access to the Internet, and the open nature of the Internet makes it impossible for one entity to control Internet content.
  - ❖ July 7, 1999 Transfer of Control Application 84-86
  - ❖ September 17, 1999 Reply Comments 86-87; 91-92
  - ❖ December 14, 1999 Ex Parte Reply Comments 23-26
  - ❖ Medin Reply Declaration (submitted with Ex Parte Reply Comments) ¶ 14
  - ❖ Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 45-50
  - ❖ September 9, 1999 Ex Parte Submission (relating to September 8, 1999 presentation to Commission staff)
  - ❖ December 6, 1999 Letter to Chairman Kennard
  
- AT&T will give its customers a choice of ISPs. Fixed wireless customers will have this choice immediately; broadband customers will have it when the current exclusivity arrangements with Excite@Home expire in 2002. The MindSpring agreement shows that commercial arrangements, not government mandates, are the best way to ensure customer choice.
  - ❖ December 6, 1999 Letter to Chairman Kennard
  
- AT&T has no plans to develop proprietary standards or protocols for Internet software and applications, and lacks the market power to do so.
  - ❖ September 17, 1999 Reply Comments 99-100
  - ❖ November 24, 1999 Response to Commission's November 3, 1999 Request for Additional Information No. 22
  - ❖ December 14, 1999 Ex Parte Reply Comments 29-32
  - ❖ Medin Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 10-13
  - ❖ Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 56-57
  
- AT&T does not use caching technology to slow down or impair the availability of any content provider or portal, but to facilitate access to popular content.
  - ❖ September 17, 1999 Reply Comments 73, 92
  - ❖ Medin Declaration (submitted with Reply Comments) ¶¶ 19-20
  - ❖ November 24, 1999 Response to Commission's November 3, 1999 Request for Additional Information No. 23
  - ❖ December 14, 1999 Ex Parte Reply Comments 26-28
  - ❖ Medin Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 15-19
  - ❖ Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 51-52
  
- Limits on video streaming ensure that certain customers cannot occupy all the bandwidth. AT&T will not impose unnecessary restrictions on access, because it needs to attract and retain subscribers.
  - ❖ September 17, 1999 Reply Comments 96-98
  - ❖ November 23, 1999 Response to Commission's November 3, 1999 Request for Additional Information No. 20
  - ❖ November 24, 1999 Response to Commission's November 3, 1999 Request for Additional Information No. 23
  - ❖ December 14, 1999 Ex Parte Reply Comments 28-29
  - ❖ Medin Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 23-24
  - ❖ Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 53-55

- AT&T has no incentive or ability to dominate any so-called related Internet "markets"
  - ❖ AT&T has no incentive or ability to dominate Internet advertising
    - September 17, 1999 Reply Comments 93-94
    - December 14, 1999 Ex Parte Reply Comments 24-26
    - Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 68-75
  - ❖ AT&T has no incentive or ability to dominate IP telephony
    - September 17, 1999 Reply Comments 98-99
    - December 14, 1999 Ex Parte Reply Comments 32-33
    - Ordoover/Willig Reply Declaration (submitted with Ex Parte Reply Comments) ¶¶ 76-77
  - ❖ AT&T has no incentive or ability to dominate Internet portals
    - September 17, 1999 Reply Comments 94-96
  - ❖ AT&T has no incentive or ability to dominate Internet backbone
    - September 17, 1999 Reply Comments 100-101

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## **Recent Announcements Further Confirm That No High-Speed Internet Network, Technology, Or Supplier Is Poised to Dominate**

### **DSL Is Available To More Residential Customers Than Cable Modem Service**

- [http://www.dslprime.com/News\\_Articles/Availability/availability.html](http://www.dslprime.com/News_Articles/Availability/availability.html) (based on announcements by the RBOCs and other DSL providers, 80 million homes are “passed” by DSL and 60 million homes are currently servable by DSL (customers “passed” have a DSLAM in the nearest telco central office; those too far away, served through a digital loop carrier, etc. are subtracted to determine currently “serve-able” homes) (includes provider-by-provider table).
- *Pacific Bell Launches High-Speed DSL Service in 22 Additional California Communities Through Project Pronto*, Business Wire (Feb. 14, 2000) (“Pacific Bell DSL is widely available today, and this is the next step toward making broadband services available to nearly every California resident”)
- [http://www.sbc.com/News\\_Center/Article.html?query\\_type=article&query=20000210-01](http://www.sbc.com/News_Center/Article.html?query_type=article&query=20000210-01) (SBC announces nationwide DSL rollout)
- Broadband Daily (Jan. 28, 2000) (Broadwing (formerly Cincinnati Bell) has deployed DSL functionality to over 70% of Cincinnati area residences)

### **DSL Subscribership Is Soaring**

- Vito Racanelli, *AOL-Time Warner Deal Leaves Baby Bells Unjustly Shunned*, Baron’s (Jan. 15, 2000) (predicting that DSL subscribership will surpass cable modem subscribership as early as next year)
- *End of 1999 – Half the US Can Purchase DSL: 80 Million Homes Passed, 60 Million Served, 500,000 Subscribers*, [http://www.dslprime.com/News\\_Articles/Availability/availability.html](http://www.dslprime.com/News_Articles/Availability/availability.html) (Feb. 4, 2000) (“The industry is confident of subscriber growth during 2000 of about 500%, rising to about three million. SBC alone projects one million, Bell Atlantic half a million, and Covad 290,000. . . . Assuming the rate for late 1999 of about 100,000 per month continues through 2000 would put DSL over 2M by the end of the year. But surveys show that most businesses [that are] aware of DSL plan to shift, and most heavy home users would if the price is right. So our most likely scenario shows an accelerating rate of growth, with 3M more likely by the end of 2000”)
- Sylvia Dennis, *DSL Taking Off Big Time*, Newsbyte News Network (Aug. 17, 1999)
- <http://www.uswest.com/news/081799.html> (“DSL is growing at a consistently faster pace than cable modem services”)

- [http://www.freedsl.com/press2\\_9\\_2000.asp](http://www.freedsl.com/press2_9_2000.asp) (Broadband Digital Group topped 400,000 consumer registrations for its free DSL service during first month; registrations average 100,000 per week since launch)
- *Consumers and Biz Have the Hots for DSL*, ZDNet Anchordesk, [www.zdnet.com/anchordesk/story/story\\_4169.html](http://www.zdnet.com/anchordesk/story/story_4169.html) ("In March of 1999, industry experts predicted there would be only 500,000-600,000 active DSL lines by the end of 1999. Data from late 1999 indicates the actual number is more than double the predictions, at approximately 1.3 million")
- *Nortel to Acquire Promatry*, Canada Stockwatch, Jan. 6, 2000 (2000 WL 6293774) ("Analysts forecast the entire DSL market is set to take off, with projections of seven million DSL lines in service by 2002")
- *DSL Is Ready To Go Home*, ZDNet Inter@ctive Week, Jan. 10, 2000 ("Thirty-seven companies joined forces at the Consumer Electronics show in Las Vegas last week to show that consumer DSL equipment is now mature, interoperable and ready to take over the average American household")
- *PC VENDORS TO OFFER G.LITE MODEMS*, Exchange Telecommunications Newsletter, November 27, 1998 ("Another indication that DSL will experience high demand is that computer manufacturers such as Compaq and Dell have announced intentions to provide preinstalled G.Lite modems in their PC")

#### DSL Providers Report Very High Early Penetration Rates

- <http://www.uswest.com/new/012600.html> (US WEST announcement that more than ten percent of DSL-qualified households are already taking its DSL service (as compared to about four percent penetration rates for cable modem services))

#### DSL Prices Continue To Fall

- *SBC Internet Services Cuts Price of DSL Internet Service, Waives Equipment and Installation Charges*, Business Wire, February 14, 2000 (SBC announces \$39.95/month DSL offering with free customer premises equipment and installation)
- *Voice-Over-DSL Turns Heads At ComNet*, Network World, Jan. 31, 2000 ("If digital subscriber line gear introduced at ComNet 2000 last week is any indication, inexpensive voice-over-DSL services should be coming soon to a service provider near you. ... Using customer-site routers that combine voice and data onto DSL links, service providers will offer bargain prices by the end of the year – 30 to 40% off the combined phone and Internet access bill customers currently have")

#### Portal And Streaming Media Companies Line Up To Make Deals With DSL Providers

- [http://www.covad.net/pr/press\\_110499a.cfm](http://www.covad.net/pr/press_110499a.cfm) (Covad and Yahoo! team to “allow users to personalize their Web Experience with rich, multimedia broadband content, which complements the news, weather, sports, financial and entertainment information already found on My Yahoo!”); <http://docs.Yahoo.com/docs/pr/release343.html> (Yahoo is “the Web’s leading aggregator and broadcaster of streaming audio and video programming,” following its July 20, 1999 acquisition of Broadcast.com)
- [http://www.sbc.com/News\\_Center/Article.html?query\\_type=article&query=19981028-01](http://www.sbc.com/News_Center/Article.html?query_type=article&query=19981028-01) (“By collaborating with a leading Internet navigation and content aggregation company such as Snap, we are solidifying the commitment to our 340,000 customers that they will receive best-in-class service and award-winning support”); [http://www.sbc.com/News\\_Center/Article.html?query\\_type=article&query=19991018-03](http://www.sbc.com/News_Center/Article.html?query_type=article&query=19991018-03) (“SBC Communications and E\*TRADE Group, Inc. today announced a multi-faceted nationwide alliance to provide high speed DSL Internet access to thousands of E\*TRADE’s most active investors, enabling them to react more quickly and effectively to breaking financial market news and benefit from E\*TRADE’s rich content offerings”)
- <http://www.ba.com/nr/1998/Oct/19981005002.html> (“‘Bell Atlantic’s addition of the Snap service means our customers will be provided with more than just speed,’ said Bob Beran, president-Bell Atlantic Internet Solutions. ‘Right out of the gate Snap provides an impressive array of quality information and brand-name resources. Snap is positioned to keep pace with longer term developments as well, because it is backed by owners such as NBC and CNET, companies that clearly understand multimedia’”)
- <http://www.microsoft.com/PressPass/press/1999/Apr99/NorthPointPR.htm> (“NorthPoint will make available customized, co-branded versions of the MSN Portal to its more than 85 ISP partners nationwide. Microsoft will market NorthPoint’s DSL-based high-speed Internet access through existing channels as well as its direct sales force”)
- <http://espn.go.com/pr/991216earthlink.html> (“GO.com has announced that its ABCNEWS.com and ESPN.com Web sites will make available high-speed, multimedia news content and sports content for EarthLink Sprint DSL, Sprint High Speed DSL and Sprint ION customers beginning early [2000]”); <http://w2.channelseek.com/press/101999.html> (“Sprint today announced additional agreements with broadband content providers, furthering Sprint’s strategy to deliver rich multimedia content and services to customers of Sprint’s High Speed DSL service. Sprint’s newest partners include ChannelSeek” . . . the most complete guide to streaming audio and video events on the Internet[, which] will enable Sprint DSL customers to access localized, daily program guides of live or prerecorded concerts, sporting events, radio programs, speeches, news events, or any other streaming media on the Web”); <http://live.av.com/scripts/editorial.dll?eeid=1245344&eetype=article&render=y> (Earthlink and Sprint have also reached content agreements with ZDNet, FOXNews.com, and FOXSports.com); <http://www.xdsl.com/newsreleases/xDSL/8189.asp> (Sprint alliance with leading interactive gaming site HEAT.NET: “‘High-speed access from Sprint is the best way to showcase online multi-player gaming,’ said Charlie Barbour, vice president and general manager, HEAT.NET. ‘By offering the lowest latency available, Sprint ION and local DSL will enable HEAT.NET players to enjoy fast action, strategy, sports and arcade games the way they were meant to be played, in real time’”)

- [http://www.broadband-daily.com/index.htm?issue\\_rec=53&article\\_rec=24](http://www.broadband-daily.com/index.htm?issue_rec=53&article_rec=24) (Lycos has a strategic alliance with Starpower, a joint venture between Pepco Communications and RCN, which is competing with DSL and cable modem providers via a fiber network that runs along power line rights-of-way)
- <http://www.xdls.com/newsreleases/xDSL/8068.asp> (US WEST will deploy its own broadband portal. "In addition to downloadable and streaming music, US WEST's broadband portal will offer movies and music videos on-demand, interactive games, real-time stock information and trading and more")
- <http://www.akamai.com/news/press703.html> ("Akamai has . . . formed relationships with broadband leaders Covad Communications, DSL.net, Network Access Solutions, NorthPoint Communications, QS Communications AG, Rhythms NetConnections Inc. and RoadRunner to embrace all types of transit and connectivity")

#### DSL "Distance Limitation" Becomes Increasingly Irrelevant

- *SBC Internet Services Cuts Price of DSL Internet Service, Waives Equipment and Installation Charges*, February 14, 2000 Business Wire (SBC's Project Pronto will virtually eliminate this distance limitation and dramatically increase service speeds by using fiber and neighborhood broadband gateways to move capabilities now housed in central offices closer to customers)
- [http://www.dslprime.com/News\\_Articles/news\\_articles.html#godigital](http://www.dslprime.com/News_Articles/news_articles.html#godigital) ("With GoDigital's GDSL System "loop length can be extended over 100,000 feet . . . US West and GTE are already using the GDSL-8 System to run 8 voice lines digitally over a single pair. . . . [The] equipment could be easily modified to deliver 544K or higher, and if produced in significant volume can do so at reasonable cost. . . . SBC is committed to [this approach to universal broadband service] and the other incumbents would be wise to match")

#### Wireless Broadband Deployment Also Surpasses Expectations

- *1999: The Year Broadband Wireless Entranced The Industry*, Wireless Today (Jan. 6, 2000) ("Once viewed as a technology that would be unreliable should a drop of rain fall within 100 feet of it, broadband fixed wireless – in its many spectrum variations – is rocking the telecom industry's foundation")
- *Usurf America Research Report Detailing National Wireless Rollout With US West & Free Wireless Offering Strategy Now Available at Ibchannel.com*, M2 Presswire, Feb. 11, 2000 (US WEST announces alliance for nationwide wireless rollout with USURF America, Inc: "By offering its Quick-Cell Fixed-Wireless Internet access for no up-front cost, USURF America believes it will be able to capture a significant share of the expanding Fixed-Wireless Internet market segment in each of its local markets. . . . By the end of 2000, USURF America intends to have established a Quick-Cell system in 110 U.S. cities. . . . The alliance [with US WEST] is key to USURF America's nationwide Wireless Quick-Cell(TM) rollout")

- <http://www.redherring.com/mag/issue67/news-feature-du99-nextlink.html> (NextLink will begin deploying broadband wireless in its 30 markets this year)
- *Nucentrix Broadband Networks Announces Program With Dell Computer*, Business Wire (Feb. 15, 2000) (Nucentrix wireless service “will allow participating Dell employees in the Austin area to use high-speed Internet connections at their residence to access Dell’s virtual private network as well as the world wide web”)
- <http://www.winstar.com/press/1999/Templ.asp?fileid=1223996> (Microsoft and leading investment banking firms invest \$900 million in Winstar’s broadband wireless business)
- *Something In The Air A Few Companies Pioneer Wireless Internet Connections*, Herald American, Feb. 3, 2000, at E1 (“Industry experts say wireless technology will become increasingly important as a competitive alternative to telephone and cable wires . . . . Wireless technology has attracted investment from some of the biggest players in telecommunications. . . . Teligent, a new company run by the former chief operating officer of AT&T, rolled out broadband wireless service in 40 cities during the past year, and owns channel rights in many more”)
- *Telecom Kiss That Duopoly Goodbye*, Forbes, Feb. 21, 2000 at 125 (MCIWorldcom and Sprint “are about to roll out a ‘fixed-wireless’ strategy that could reach 60 million homes in 190 cities in the next couple of years. It is a crucial but little-known reason behind their pending merger, and it may offer a far cheaper way to get around ‘the last mile’ that cable and phone lines have into the home”)